

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

VIOLA WEBER,
Debtor.

Case No. 98-56690-MM
Chapter 13

**MEMORANDUM DECISION AND
ORDER THEREON**

I. Facts

Viola Weber was receiving social security retirement benefit checks of \$465 per month from August 1993 until September 1998. Weber also received Social Security Supplemental Income benefits during the years 1991 to 1997. In 1998, the Social Security Administration determined that Weber had been overpaid SSI benefits and had incurred an overpayment of retirement benefits.

Weber filed her chapter 13 petition on August 19, 1998. Weber filed a work notice report with SSA stating that her earnings in 1998 would exceed \$25,000. Because of the work notice report, SSA placed Weber in deferred status in order to recoup the overpayment of retirement benefits. In September 1998, Weber filed a second work notice report with SSA stating that her earnings for 1998 totaled only \$11,227. SSA kept Weber in non-payment status for the months September 1998 through December 1998 without obtaining relief from the automatic stay.

II. Contentions of the Parties

The debtor claims that the Social Security Administration willfully violated the automatic stay by withholding her benefits. The SSA states that the post-petition deductions that have been taken from the debtor's social security benefits are a valid recoupment for overpayments of retirement and SSI benefits. In addition, SSA states that its recoupment cannot be deemed a willful violation since they did not know of debtor's chapter 13 case until served with the present motion.

III. Discussion

A. Chapter 13 provides protection against recoupment of social security benefits

Recoupment is defined as "the setting up of a demand arising from the same transaction as the plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim." *See In re University Medical Center*, 973 F.2d 1065, 1079 (3d Cir. 1992). In the bankruptcy context, the doctrine of recoupment is narrowly construed. In order to apply the recoupment doctrine, the debtor's and the creditor's respective claims must arise out of the same transaction. *See United States v. Consumer Health Services of America, Inc.*, 108 F.3d 390, 395 (D.C. Cir. 1997). Although there is no precise definition of the "same transaction" standard, the Court of Appeals for the Ninth Circuit has stated that recoupment should be applied to bankruptcy cases only when it would "be inequitable for the debtor to enjoy the benefits of that transaction without meeting its obligations." *Newbery Corp. v. Fireman's Fund Insurance Co.*, 95 F.3d 1392, 1403 (9th Cir. 1996).

In a nearly identical fact pattern, the Court of Appeals for the Third Circuit addressed the issue of whether the Social Security Administration violated the automatic stay in withholding social security benefits. *See Lee v. Schweiker*, 739 F.2d 870, 876 (3d Cir. 1984). In *Lee*, the debtor, a social security recipient received an overpayment of benefits prior to her filing for chapter 13 bankruptcy. Post-petition, the Social Security Administration attempted to offset future payments against the overpayments and reduced her monthly payments. The court held that "[a]lthough the paying agency can ordinarily recover overpayments, just as creditors can ordinarily obtain payment from a debtor's future income, the Bankruptcy Code protects a debtor's future income from such claims once a petition has been filed, and the Social Security Administration violated the automatic stay in continuing to withhold part of Lee's benefits after she had filed her petition. . . . [T]he primary

1 purpose of these statutes is to provide income security to the recipients. Once a bankruptcy petition
2 is filed, the income provided by Social Security benefits should be protected by the automatic stay.”
3 *Lee v. Schweiker*, 739 F.2d at 876.

4 In *Sullivan v. Everhart*, cited by the Social Security Administration, the United States
5 Supreme Court held that adjustments of Social Security benefits may be made by increasing or
6 decreasing future benefits. *See Sullivan v. Everhart*, 494 U.S. 83, 100 S.Ct. 960, 108 L.Ed.2d 72
7 (1990). However, the *Sullivan* case did not deal with recoupment in the bankruptcy context. There
8 is no question that absent bankruptcy protections, the Social Security Administration has the right to
9 recoup for overpayments.

10 B. The Social Security Administration was on notice of the bankruptcy case

11 The Social Security Administration is listed in the debtor’s schedules as a creditor. Notice of
12 the bankruptcy was sent to both the Carmel, CA and Kansas City, MO field offices. The service of
13 the notice of the petition and the plan placed the Social Security Administration on notice of the
14 debtor’s bankruptcy and was sufficient to cause a reasonable person to make further inquiry. Since
15 the Social Security Administration had knowledge of the bankruptcy, under section 362(h), the debtor
16 would be entitled to actual damages of attorney’s fees and costs for bringing this motion. In this case,
17 however, debtor’s counsel withdrew his request for fees and costs after the Social Security
18 Administration voluntarily resumed the payment of benefits.

19 IT IS SO ORDERED.

20 DATED: _____

UNITED STATES BANKRUPTCY JUDGE